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**MEMO ENDORSED**

September 5, 2007

**VIA FAX**

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Honorable Colleen McMahon  
United States District Judge  
Daniel Patrick Moynihan  
United States Courthouse  
500 Pearl Street, Room 640  
New York, New York 10007

9/5/07  
The request is  
granted.  
CM

Re: Goines v. The City of New York et al 07-CV-05448 (CM)

Your Honor:

I am the attorney in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above matter, in which defendants City of New York and Raymond Kelly previously requested an enlargement of time, until September 5, 2007, to respond to the complaint in this matter. Defendants City and Kelly also requested that the same extension be granted to the individually named defendants, Police Officers Clarke and Russo in order to ensure that their defenses were not jeopardized while representation issues were being decided.<sup>1</sup> The Court granted this request, and the City subsequently conducted a representational investigation, pursuant to Section 50-K of the New York General Municipal Law, to determine whether we could represent Police Officers Clarke and Russo. This Office has recently determined that we are unable to represent Officer Russo. Therefore, we are requesting that Officer Russo's time to respond to the complaint in this civil rights action be enlarged an additional thirty (30) days to and including October 5, 2007, so that he may have an opportunity to obtain counsel before responding to the complaint. Plaintiff's counsel consents to this request.

Additionally, if the Court is so inclined as to grant this request, defendants further respectfully request that the Court grant defendants a thirty (30) day enlargement of time after defendant Dennis Russo has responded to the complaint and issue has been fully joined to depose plaintiff. In accordance with Your Honor's individual rules of practice, defendants Kelly and Clarke filed a "bare" Notice of Motion for Summary Judgment today with their answer

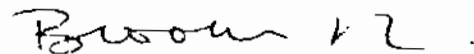
<sup>1</sup> Today, defendants City of New York, Raymond Kelly and Police Officer Gregory Clarke filed their answer. On information and belief, Police Officer Dennis Russo was served with a Waiver of Service in this action.

indicating that they plan to move for summary judgment on the issue of qualified immunity. However, Officer Russo has not appeared in this matter and therefore, if defendants depose plaintiff, his interests will neither be represented at the deposition nor will his counsel be present. Thus, the likelihood exists that plaintiff will need to be deposed a second time by Officer Russo's counsel. In order to avoid two separate depositions of plaintiff while simultaneously complying with Your Honor's individual rules of practice, defendants respectfully request that the Court grant them a thirty (30) day enlargement of time until after defendant Dennis Russo has responded to the complaint and issue has been fully joined to depose plaintiff.

Accordingly, in light of the above, defendants City of New York, Raymond Kelly and Gregory Clarke respectfully request that (1) Officer Dennis Russo's time to respond to the complaint in this civil rights action be enlarged an additional thirty (30) days to and including October 5, 2007, so that he may have an opportunity to obtain counsel before responding to the complaint and (2) the Court grant them a thirty (30) day enlargement of time after Officer Dennis Russo has responded to the complaint and issue has been fully joined to depose plaintiff and move for summary judgment on the issue of qualified immunity.

I thank the Court for its time and consideration of this request.

Respectfully submitted,



Brooke Birnbaum (BB 8338)  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Mr. Michael Hueston, Esq. (By Fax)